IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

WRIT PETITION NO. 2974 OF 2005.

Dr.Madhav Dattatraya Desai & ors. .. Petitioner.

V/s.

Dr. Suresh Madhukar Nagarkar ... Respondent.

Shri S. M. Railkar for S.W. Kulkarni for the petitioner.

Shri S. V. Dhakephalkar for the respondent.

CORAM : V.C.DAGA, J.

DATED : 1.12.2005.

P.C. :

. Rule returnable forthwith. Heard rival parties.

2. This petition is directed against the order dated 27.1.2005 passed by the Division Bench of the Small Causes Court, Bombay, refusing to condone delay in presenting the appeal.

3. While presenting the appeal challenging the order dated 29.7.2003 passed by the trial Court, application for condonation of delay was also filed stating therein that the impugned order was passed on 29.7.2003. Application for certified copy of the order was made on 2.8.2003 and the same was received on 2.12.2003. Appeal appears to have been filed on 29.3.2004. Prima facie, there appears to be delay

of 3 to 4 months. For explaining delay, petitioner stated as under:

> . "I say that my mother Smt. Malati Madhav Desai is ill land bedridden. I am only person in the residence looking after her. Since my other required medical assistance from September to December 2003. Thereafter, I was in caviar financial crisis, I could not file said appeal. Therefore I have not contacted my Advocate for preparation of present appeal. Thereafter I contacted my Advocate 3rd week of March, 2004 and instructed to file the present appeal."

. Having heard rival parties, there is neither wilful default on the part of the petitioner in filing appeal nor any third party interest in the meanwhile has been created by virtue of delay. In this view of the matter, delay should have been condoned by the Lower appellate Court itself. In my view, delay has been satisfactorily explained. Impugned order is, therefore, quashed and set aside and delay in filing appeal is condoned. Lower appellate Court is directed to decide the appeal as expeditiously as possible, at any rate, within a period of six months from the date of receipt of copy of this order.

. Petition stands disposed of in terms of this order with no order as to costs.